

JUN 18 2018

JULIA C. DUDLEY, CLERK  
BY: DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

DARYLL SHUMAKE,  
Plaintiff,

v.

COMMONWEALTH OF VIRGINIA,  
Defendant.

Civil Action No. 7:18-cv-00264

MEMORANDUM OPINION

By: Hon. Michael F. Urbanski  
Chief United States District Judge

Daryll Shumake, a Virginia inmate proceeding pro se, filed a complaint pursuant to 42 U.S.C. § 1983, naming the Commonwealth of Virginia as the sole defendant. Suing the Commonwealth of Virginia via § 1983 is the pursuit of “an indisputably meritless legal theory,” and amending the complaint in this § 1983 action against this defendant would be futile. See, e.g., Neitzke v. Williams, 490 U.S. 319, 327 (1989); see also West v. Atkins, 487 U.S. 42, 48 (1988); Edelman v. Jordan, 415 U.S. 651, 663 (1974). Accordingly, the action is dismissed as frivolous pursuant to 28 U.S.C. § 1915A(b)(1).<sup>1</sup> See Nelson v. Virginia, No. 7:16CV00055, 2016 U.S. Dist. LEXIS 95022, at \*3, 2016 WL 3963242, at \*2 (W.D. Va. July 21, 2016) (dismissing claims against the Commonwealth of Virginia as frivolous), appeal dismissed as frivolous, 672 F. App’x 333 (4th Cir. 2017).

ENTER: This 18<sup>th</sup> day of June, 2018.

*/s/ Michael F. Urbanski*  
Chief United States District Judge

<sup>1</sup> Moreover, Plaintiff is a “three-striker” per 28 U.S.C. § 1915(g), and his allegations about frustrated access to grievance procedures and falling in his cell nearly two months earlier do not describe an “imminent danger of serious physical injury” to allow him to proceed without prepaying the filing fee.